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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,486	07/28/2000	Paranthaman Narendran	BOON.P001	3143

30554 7590 08/23/2004

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EXAMINER

TRAN, THIEN D

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 08/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/627,486

Applicant(s)

NARENDRAN, PARANTHAMAN

Examiner

Thien D Tran

Art Unit

2665

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 10-13 and 16-18 is/are allowed.
- 6) ☒ Claim(s) 1, 14, 19-21 and 31-35 is/are rejected.
- 7) ☒ Claim(s) 2-9, 15, 22-30 and 36-44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 14 are rejected under 35 U.S.C. 102(e) as being participated by Riggan et al (U.S Patent No. 6,490,252 B1).

Regarding claim 1, Riggan discloses a system for real-time buying and selling of bandwidth, and routing of excess traffic over bandwidth purchased in real time, the system comprising:

a node 300 (router) that routes a plurality of data packets from a number of network users to a number of backbone providers, the router having (col.5 lines 30-45):

a number of input ports that receive the data packets, a number of output ports that transmit the data packets to the backbone providers, switching circuitry that connects each input port to each output port (col.6 lines 30-40),

a switch controller or CPU 302 or network management system 206 (traffic measuring circuitry) that measures a traffic level on each of the input ports, identifies

types of data packets, and outputs traffic information in response thereto (col.5 lines 35-38, col.6 lines 45-60),

a CPU 302 (switch controller) that receives the traffic information from the traffic measuring circuitry and a number of routing instructions, and controls the switching circuitry in response thereto (col.6 lines 55-65); and

a CPU 356 (route optimizer) connected to the router, the CPU 356 receiving signals (operating instructions), and generating the routing instructions for each input port in response thereto, the routing instructions including a first routing instruction that identifies an output port connected to a fixed-capacity bandwidth provider that can receive data packets up to a first traffic level, and a second routing instruction that indicates that data packets in excess of the first traffic level are to be output to a usage-based bandwidth provider that offers capacity on an as-needed basis (col.8 lines 5-35).

Regarding claim 14 Riggan discloses a method for routing data traffic from a start point to an end destination, a plurality of bandwidth providers being connected to the start point and providing service to the end destination, the method comprising the steps of:

continually measuring an amount of time required to send data to the end destination on each of the bandwidth providers that provide service to the end destination (col.7 lines 39-46);

statistically measuring the amount of time to form a measured response time (col.5 lines 32-40);

assigning each bandwidth provider to one of a range of response times based on the measured response time (col.8 lines 45-65).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19-21, 31-35 are rejected under 35 U.S.C. 103(a) as being participated by Sabry et al (U.S Patent No. 6,728,266 B1).

Regarding claims 19, 31 Sabry discloses a method for buying and selling Internet protocol (IP) transit comprising bandwidth, the method comprising:

buying bandwidth in real-time from network nodes 14, 15 (backbone providers),
col.4 lines 30-60;

selling bandwidth in real-time to users, col.11 lines 12-25; and

reselling bandwidth in real-time to users, wherein the users act as traders of bandwidth, col.9 lines 35-43 (bandwidth to be resold is excess bandwidth previously purchased by users if the users want to make profits on the unused bandwidth, it's a matter of choices).

Sabry does not disclose that the excess bandwidth purchased previously by the users is the resold bandwidth. However, it would have been obvious to one having

ordinary skill in the art to resell the excess bandwidth previously purchased by the users so that the users can make profit, it is a matter of choice by the users.

Regarding claims 20, 34 Sabry discloses that users comprise Internet service providers, col.2 lines 38-44.

Regarding claims 21, 35 Sabry discloses selling of different bandwidth requirements (types) in real-time to users, col.6 lines 15-30. Sabry does not disclose that the selling of fixed capacity bandwidth, and the selling of usage-based bandwidth, wherein usage-based bandwidth. However, it would have been obvious to one having ordinary skill in the art to sell bandwidths of fixed capacity and usage-based capacity to achieve the diversity of choices in prices and priorities provided to the customers.

Regarding claims 32, 33 Sabry discloses the quality of service comprises a determine (measure) of time required for a resource level values (behaviors) at each node (transmit data from a start point to a destination), col.5 lines 50-67.

Allowable Subject Matter

5. Claims 2-9, 15, 25-27, 30, 39-41, 44, 22-30, 36-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 10-13, 16-18 are allowed.

Response to Arguments

7. Applicant's arguments filed 06/10/2004 have been fully considered but they are not persuasive.

Regarding claim 1, Applicant argues that Riggan does not disclose a switching circuitry used for measuring a traffic level on the input ports. However, Examiner respectfully disagrees with the argument because Riggan discloses monitoring QoS of traffic from a user the input/output ports of the user interface to see if it excess threshold level or not, col.4 lines 42-45, col.6 lines 45-52. Applicant argues that Rigan does not disclose identifying types of data packets, and output traffic information in response thereto. However, Examiner respectfully disagrees with the argument because Riggan discloses the indicative information responding to the type of receiving packets being monitored at the user interface, col.8 lines 49-60.

Regarding claim 14, Applicant argues that continually measuring an amount of time required sending data to the end destination on each provider. However, Examiner respectfully disagrees with the argument because Riggan discloses recording an amount of time during which the usage of the network goes to below threshold at the network nodes 300, node 300a and 300b (start provider and end provider), col.7 lines 39-46.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP


§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Thien Tran whose telephone number is (703) 308-4388. The examiner can normally be reached on Monday-Friday from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu, can be reached on (703) 308-6602. Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Thien Tran



STEVEN NGUYEN
PRIMARY EXAMINER